SourceIT

IT Consultancy Services Contract

Release version 2.4

[Insert name of Customer] (Customer)
[Insert name of Contractor] (Contractor)
IT Consultancy Services Contract

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Contract Information

Date  [insert date]

Parties

<table>
<thead>
<tr>
<th>Name</th>
<th>[insert name of Customer]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Short form name</td>
<td>Customer</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name</th>
<th>[insert name of Contractor]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Short form name</td>
<td>Contractor</td>
</tr>
</tbody>
</table>

Background

A  The Customer requires the provision of certain information technology consultancy services.

B  The Contractor has fully informed itself on all aspects of the work required to be performed and has represented that it has the requisite skills and experience to perform that work.

C  The Customer has agreed to engage the Contractor to provide the Services on the terms and conditions contained in this Contract.
Agreed Terms

Part 1 – Services

1. Definitions and interpretation

1.1 Definitions
In this Contract, except where the contrary intention is expressed, the following definitions are used:

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounting Standards</td>
<td>the standards of that name maintained by the Australian Accounting Standards Board (created by section 226 of the <em>Australian Securities and Investments Commission Act 2001</em> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.</td>
</tr>
<tr>
<td>Administrative Arrangements Order</td>
<td>A ministerial order that administrative functions be allocated or reallocated between various Agencies as specified in the order.</td>
</tr>
<tr>
<td>Advisers</td>
<td>(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.</td>
</tr>
<tr>
<td>Agency</td>
<td>(a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation (including a local authority); (b) a body established by the Governor-General or by a Minister of State of the Commonwealth including departments; or (c) an incorporated company over which the Commonwealth exercises control.</td>
</tr>
<tr>
<td>Agency Order Form</td>
<td>the form set out in Schedule 7.</td>
</tr>
<tr>
<td>Agreed Terms</td>
<td>clauses 1 to 31 of the Contract which set out terms and conditions agreed by the parties.</td>
</tr>
<tr>
<td>Auxiliary Material</td>
<td>any Material, other than Contract Material, which is made available by a party for the purpose of this Contract, on or following the Commencement Date, and includes: (a) Third Party Material; (b) error corrections or translations to that Material; or (c) derivatives of that Material where such derivative work cannot be used without infringing the Intellectual Property Rights in the underlying Material.</td>
</tr>
<tr>
<td>Business Day</td>
<td>(a) for receiving a notice under clause 30, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and (b) for all other purposes, any day that is not a Saturday or Sunday</td>
</tr>
</tbody>
</table>
or a national public holiday, and a 'national public holiday' is a Commonwealth public service holiday throughout Australia promulgated in the Commonwealth of Australia Gazette.

**Business Hours**
from 8.00am to 6.00pm on a Business Day at the place where the Services are to be provided, unless specified otherwise in item 5 of the Contract Details.

**CERT Australia**
the National Computer Emergency Response Team established by the Commonwealth Attorney-General's Department, details of which are available at [https://www.cert.gov.au/about](https://www.cert.gov.au/about)

**Change Order**
the form set out in Schedule 6.

**Commencement Date**
the date on which this Contract commences, as specified in item 6 of the Contract Details.

**Commonwealth**
the Commonwealth of Australia.

**Confidential Information**
information that is by its nature confidential; and
(a) is designated by a party as confidential and is described in Schedule 4 of this Contract; or
(b) a party knows or ought to know is confidential, but does not include:
(c) information which is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation.

**Contract**
this agreement between the Customer and the Contractor, as amended from time to time in accordance with clause 31.2, and includes its schedules and any attachments.

**Contract Details**
the details set out in Schedule 1.

**Contract Material**
any Material created by the Contractor on or following the Commencement Date, for the purpose of or as a result of performing its obligations under this Contract.

**Contract Period**
the Initial Contract Period plus any extension in accordance with clause 3.2.

**Contractor**
the party specified in item 2 of the Contract Details and includes its subcontractors and Personnel.

**Contractor Representative**
the person identified in item 4 of the Contract Details.

**Corporations Act**
the *Corporations Act 2001* (Cth).

**Customer**
the party specified in item 1 of the Contract Details.

**Customer Data**
all data and information relating to the Customer, and its operations, facilities, customers, Personnel, assets and programs (including personal information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of the Customer.
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer Material</td>
<td>any Auxiliary Material provided to the Contractor by the Customer, including the Material (if any) specified in item 18 of the Contract Details.</td>
</tr>
<tr>
<td>Customer Representative</td>
<td>the person identified in item 3 of the Contract Details.</td>
</tr>
<tr>
<td>Deliverable</td>
<td>any Contract Material or other item to be supplied by the Contractor under this Contract.</td>
</tr>
<tr>
<td>Documentation</td>
<td>the documentation to be provided by the Contractor under clause 7.</td>
</tr>
<tr>
<td>Harmful Code</td>
<td>any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or other technical mechanism that is included to manage the proper use of any software.</td>
</tr>
<tr>
<td>Initial Contract Period</td>
<td>the period of time for which this Contract is intended to continue, as specified in item 7 of the Contract Details.</td>
</tr>
<tr>
<td>Intellectual Property Rights</td>
<td>all intellectual property rights, including but not limited to, the following rights:</td>
</tr>
<tr>
<td></td>
<td>(a) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks) and domain names;</td>
</tr>
<tr>
<td></td>
<td>(b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and</td>
</tr>
<tr>
<td></td>
<td>(c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.</td>
</tr>
<tr>
<td>Law</td>
<td>any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.</td>
</tr>
<tr>
<td>LEADR</td>
<td>the dispute resolution association with that name and the Australian Business Number 69 008 651 232.</td>
</tr>
<tr>
<td>Legal Services Directions</td>
<td>the Commonwealth Attorney General's Legal Services Directions issued under section 55ZF of the <em>Judiciary Act 1903</em> (Cth), as amended or replaced from time to time.</td>
</tr>
<tr>
<td>Losses</td>
<td>liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party).</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Material</td>
<td>any software, firmware, documented methodology or process, tolls, object libraries, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any Intellectual Property Rights.</td>
</tr>
<tr>
<td>Milestone</td>
<td>any fixed date to be met by the Contractor in performing any of its obligations under this Contract, as specified in the Statement of Work.</td>
</tr>
<tr>
<td>Moral Rights</td>
<td>each and every ‘moral right’ as defined in the Copyright Act 1968 (Cth).</td>
</tr>
<tr>
<td>Nominated Agency</td>
<td>any Agency, including those listed in item 10 of the Contract Details, which may require the provision of Services under this Contract.</td>
</tr>
<tr>
<td>Notice</td>
<td>a notice, demand, consent, approval or communication issued under this Contract.</td>
</tr>
<tr>
<td>Performance Criteria</td>
<td>the requirements set out in the Statement of Work for each Service and Deliverable.</td>
</tr>
<tr>
<td>Personnel</td>
<td>in relation to a party, any natural person who is an employee, officer, agent or professional adviser of that party or, in the case of the Contractor, of a subcontractor.</td>
</tr>
<tr>
<td>Protective Security Policy Framework or PSPF</td>
<td>the Australian Government’s protective security requirements for the protection of its people, information and assets (which replaced the Commonwealth Protective Security Manual 2005), as amended or replaced from time to time.</td>
</tr>
<tr>
<td>Service Charges</td>
<td>the charges payable to the Contractor in accordance with Schedule 3.</td>
</tr>
<tr>
<td>Services</td>
<td>the consultancy services to be provided by the Contractor, as specified in the Statement of Work and includes the supply of the Deliverables.</td>
</tr>
<tr>
<td>Specified Personnel</td>
<td>the Contractor’s subcontractors and Personnel specified in item 15 of the Contract Details.</td>
</tr>
<tr>
<td>Statement of Work</td>
<td>the details of the Services to be performed under this Contract, as set out in Schedule 2.</td>
</tr>
<tr>
<td>Third Party Material</td>
<td>Auxiliary Material in which a third party holds Intellectual Property Rights.</td>
</tr>
<tr>
<td>Warranted Materials</td>
<td>the Auxiliary Material provided by the Contractor, the Deliverables.</td>
</tr>
</tbody>
</table>
1.2 Interpretation

In this Contract, except where the contrary intention is expressed:

(a) the singular includes the plural and vice versa, and a gender includes other genders;
(b) another grammatical form of a defined word or expression has a corresponding meaning;
(c) a reference to a clause, paragraph, schedule, attachment or annexure is to a clause or paragraph of, or schedule, or attachment or annexure to, this Contract, and a reference to this Contract includes any schedule or attachment or annexure;
(d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
(e) a reference to \text{A$}, \$A, \text{dollar} or \$ is to Australian currency;
(f) a reference to time is to the time in the place where the obligation is to be performed;
(g) a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party’s executors, administrators, successors and permitted assignees and substitutes;
(h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
(i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
(j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
(k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
(l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
(m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
(n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it;
(o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
(p) headings are for ease of reference only and do not affect interpretation.
1.3 **Trustee Contractor**

If the Contractor acts as trustee of a trust, in relation to this Contract:

(a) it is liable both personally, and in its capacity as trustee of that trust;

(b) it must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust, but retain and apply such indemnity only towards meeting its obligations under this Contract;

(c) it must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust; and

(d) it represents and warrants that:

   (i) such trust has been duly established and currently exists;

   (ii) it is the duly appointed, current and only trustee of that trust;

   (iii) as such trustee it has the power to enter into and perform its obligations under this Contract;

   (iv) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;

   (v) conflict of interest and duty affecting it as such trustee (and/or its directors, if any) does not arise, OR otherwise is overcome by the terms of the relevant trust deed; and

   (vi) no breach of the relevant trust deed exists or would arise.

1.4 **Completion of Schedules**

To the extent that the parties have not completed items in a Schedule, unless otherwise stated in the Schedule, that item will be taken to be 'not applicable' for the purpose of this Contract.

2. **Priority of Contract documents**

If there is inconsistency between any of the documents forming part of this Contract, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

(a) Agreed Terms;

(b) Schedules;

(c) Any attachments to the Schedules; and

(d) Documents incorporated by reference in this Contract.
3. Duration of Contract

3.1 Initial Contract Period
This Contract begins on the Commencement Date and continues for the duration of the Initial Contract Period unless terminated in accordance with clause 26.3 or 28.

3.2 Option to extend Contract Period
(a) The Initial Contract Period may be extended by the Customer for further period(s), specified in item 8 of the Contract Details (each an Option Period), on the terms and conditions then in effect, by giving written notice to the Contractor. Such notice must:

(i) be at least 30 days; or

(ii) such other period as specified in item 9 of the Contract Details (Option Notice Period),

before the end of the current Contract Period.

(b) Any extension exercised in accordance with this clause 3.2 takes effect from the end of the then current Contract Period.

4. Services to other Agencies

4.1 Obligation to provide Services
The Contractor offers to provide the Services to any Nominated Agency in accordance with the requirements set out in this clause 4.

4.2 Request
A Nominated Agency may request the supply of Services in accordance with clause 4.1, by giving the Contractor a completed Agency Order Form.

4.3 Separate contracts
Each completed Agency Order Form in accordance with this Contract if and when agreed to by the Contractor, will create a separate contract between the Contractor and:

(a) the Commonwealth represented by the Nominated Agency (where that agency is subject to the Financial Management and Accountability Act 1997 (Cth)); or

(b) the Nominated Agency,

as the case requires, for the supply by the Contractor of the requested Services to the Nominated Agency. For the sake of clarity, the terms and conditions governing each such separate contract will be the same as the provisions of this Contract subject to the agreed Agency Order Form.

5. General obligations of the parties
The parties will, at all times:

(a) act reasonably in performing their obligations and exercising their rights under this Contract;

(b) diligently perform their respective obligations under this Contract; and

(c) work together in a collaborative manner.
6. **Provision of Services**

6.1 **Service obligations**

The Contractor must supply the Services:

(a) with due skill and care and to the best of the Contractor's knowledge and expertise;

(b) in accordance with the Performance Criteria;

(c) in accordance with relevant Australian industry standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines, including any specified in item 11 of the Contract Details;

(d) using the Specified Personnel (if any);

(e) in accordance with all applicable Laws;

(f) in accordance with Commonwealth policies and specific requirements set out in Schedule 5;

(g) in accordance with any reasonable directions in relation to the Services given by the Customer from time to time;

(h) so as to meet the Milestones and other project plan requirements, and where no Milestones or project plan requirements are specified, promptly and without delay; and

(i) otherwise in accordance with the provisions of this Contract.

6.2 **Contractor warranties**

The Contractor represents and warrants that:

(a) it has the right to enter into this Contract;

(b) it has all rights, title, licences, interests and property necessary to lawfully perform the Services;

(c) it and its subcontractors and Personnel, including its Specified Personnel, have the necessary experience, skill, knowledge and competence to perform the Services;

(d) the Services will be fit for the purpose as set out in the Statement of Work;

(e) the Services will be complete, accurate and free from material faults;

(f) it will not, nor will it suffer or permit any third party under its direction or control to negligently introduce into the Customer's systems or any Deliverables any Harmful Code; and

(g) if any Harmful Code is introduced, it will use all reasonable efforts promptly to report that introduction to the Customer and, where that Harmful Code is introduced as a result of a breach of clause 6.2(f), it will:

(i) take all necessary action to eliminate the Harmful Code; and

(ii) promptly, at its own cost, repair any harm or destruction caused by that Harmful Code.

6.3 **Access to Customer's premises**

The Customer must cooperate with the Contractor by providing access to its premises and facilities as reasonably necessary to enable the Contractor to provide the Services.
6.4 **Conduct at Customer's premises**

The Contractor must, if using or accessing the Customer's premises or facilities, comply with all reasonable directions and procedures relating to work health and safety and security in operation at those premises or facilities whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.

6.5 **Subcontracting**

The Contractor must:

(a) not subcontract (including any use of a third party to perform) any aspect of the provision of the Services other than to those entities set out in item 12 of the Contract Details without the prior written approval of the Customer, which will not be unreasonably withheld;

(b) not, in any event, enter into a subcontract under this Contract with a subcontractor named by the Director of the Workplace Gender Equality Agency in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the *Workplace Gender Equality Act 2012* (Cth); and

(c) ensure that any subcontractor approved under this Contract complies with:

(i) Clause 20 (Confidentiality and privacy);

(ii) Clause 21 (Protection of personal information);

(iii) Clause 22 (Conflict of interest);

(iv) Clause 23 (Security);

(v) Clause 25.2 (Audit and access by Customer); and

(vi) Clause 29 (Knowledge transfer).

6.6 **Fair Work Principles**

(a) The Contractor must comply, and as far as practicable must ensure its subcontractors comply, with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide, including by:

(i) complying with all applicable workplace relations law, WHS Law, and workers’ compensation laws;

(ii) informing the Customer of any adverse court or tribunal decision for a breach of workplace relations law, WHS Law, or workers’ compensation laws made against it during the term of the Contract and any remedial action it has taken, or proposes to take, as a result of the decision;

(iii) providing the Customer any information the Customer reasonably requires to confirm that the Contractor (and any subcontractor) is complying with the Fair Work Principles; and

(iv) participate in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.

(b) Compliance with the Fair Work Principles shall not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.
(c) If the Contractor does not comply with the Fair Work Principles, without prejudice to any rights that would otherwise accrue to the Customer, the Customer shall be entitled to publish details of the Contractor’s failure to comply (including the Contractor’s name) and to otherwise provide those details to other Commonwealth agencies.

(d) As far as practicable, the Contractor must:

(i) not use a Subcontractor in relation to this Contract where the Subcontractor would be precluded from contracting directly with the Commonwealth under the requirements of the Fair Work Principles; and

(ii) ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations under the sub-clauses contained in clause 6.6.

6.7 Work Health and Safety

(a) In relation to this Contract the Contractor must:

(i) comply, ensure that the Services and work conducted by or on its behalf comply, and ensure so far as is reasonably practicable that its Personnel comply, with the WHS Law and with all applicable Laws, standards and policies and requirements of this Contract that relate to the health and safety of the Contractor, Personnel and third parties. The other provisions of clause 6.7 do not limit this clause;

(ii) ensure so far as is reasonably practicable, that the health and safety of other persons (including Customer Personnel) is not put at risk;

(iii) consult, cooperate and coordinate with the Customer in relation to the Contractor’s work health and safety duties;

(iv) promptly notify the Customer of any event or circumstance that has, or is likely to have, any adverse effect on the health or safety of persons to whom the Customer has a duty under WHS Law;

(v) if a ‘notifiable incident’ (as defined by WHS Law)(Notifiable Incident) occurs:

(A) immediately report to the Customer including all relevant details known to the Contractor; and

(B) as soon as possible investigate the Notifiable Incident to determine (as far as can reasonably be done) its cause and any adverse effects on the Contract including risks to health and safety, and take all reasonable steps to remedy any effects on health and safety and to ensure the event or circumstances that led to the Notifiable Incident do not recur.

(vi) comply, and ensure that its Personnel comply, with any direction given by the Customer in connection with its work under this Contract, that the Customer considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons (including a Notifiable Incident);

(vii) promptly provide to the Customer, upon request, information documentation or evidence relevant to its obligations under this clause 6.7, or to assist the Customer and its Personnel to comply with their duties under WHS Law, including a written report on the investigation and response to an event or circumstance notified under paragraphs 6.7(a)(iv) or (v); and
(viii) co-operate fully with any investigation by any government agency (including the Commonwealth), parliamentary inquiry, board of inquiry or coronial inquiry with respect to a Notifiable Incident.

(b) If the Contractor uses a subcontractor in relation to this Contract, it must ensure that the subcontract imposes obligations on the subcontractor equivalent to the obligations under clauses 6.4 and 6.7(a).

(c) The Contractor acknowledges that it will meet its obligations under this clause 6.7 solely at its own cost and expense, and without charge to or reimbursement from the Customer (or the Commonwealth).

7. Documentation

7.1 Provision of Documentation
The Contractor must give the Customer the Documentation specified in the Statement of Work in the format and at the times specified in the Statement of Work.

7.2 Documentation requirements
The Documentation must at the time of delivery:

(a) be current and accurate;

(b) adequately explain key terms and symbols; and

(c) unless specified otherwise in item 13 of the Contract Details, be in English.

8. Varying the Services

8.1 Variations proposed by Customer
If the Customer wants to vary the Services:

(a) the Customer must request the Contractor in writing setting out the proposed variations;

(b) within 14 days after receiving the Customer's request or within another period agreed by the parties, the Contractor must respond in writing to the Customer specifying what impact those variations will have on:

(i) the Service Charges (see clause 8.3);

(ii) the Services or Deliverables, including any particular Deliverable;

(iii) the Contractor's ability to perform its obligations under this Contract (including its ability to meet Milestones); and

(iv) this Contract; and

(c) within 14 days after receiving the Contractor's response, or within another period agreed by the parties, the Customer must give the Contractor a written notice accepting or rejecting the response.

8.2 Variations proposed by Contractor
If the Contractor wants to vary the Services:

(a) the Contractor must request the Customer in writing setting out the proposed variations and specifying what impact those variations will have on:
(i) the Service Charges (see clause 8.3);
(ii) the Services or Deliverables, including any particular Deliverable;
(iii) the Contractor's ability to perform its obligations under this Contract (including its ability to meet Milestones); and
(iv) this Contract; and
(b) within 14 days after receiving the request or within another period agreed by the parties, the Customer must give the Contractor a written notice accepting or rejecting the Contractor's request.

8.3 Changes to Service Charges
Changes to Service Charges associated with a variation in the Services must:
(a) not exceed any reasonable additional cost; and
(b) take fully into account any reduction in cost.

8.4 Effective date of variation
Any variation in the Services takes effect from the date on which the parties execute a Change Order. This Contract will be amended to give effect to the Change Order.

9. Co-operation with Personnel and contractors
The Contractor must in the performance of the Services under the Contract:
(a) fully co-operate with the Customer's Personnel and other contractors; and
(b) use its best efforts to coordinate its activities so as to support and facilitate, in the Customer's best interests, the timely and efficient completion of all work and other activities to be performed for the Customer by any person.

10. Monitoring progress
10.1 Progress meetings
The parties will meet at the times set out in the Statement of Work (or otherwise as agreed in writing between the parties) to discuss any issues in relation to the provision of the Services. The Contractor must ensure that the Contractor Representative and the Customer must ensure the Customer Representative is reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either party.

10.2 Reporting
The Contractor must provide the Customer with reports in accordance with the Statement of Work.

11. Performance assessment
11.1 Assessment of Services
Each element of the Services is subject to assessment by the Customer against the relevant Performance Criteria.

11.2 Notice of non-compliant Services
(a) If the Customer considers that all or part of the Services do not meet the Performance Criteria, the Customer must notify the Contractor within 5 Business Days (or such
other period as specified in item 14 of the Contract Details) of assessing the Services against the Performance Criteria.

(b) The Customer must include reasons for the Services not meeting the Performance Criteria in the notice given under clause 11.2(a).

11.3 Rectification of non-compliant Services

If the Customer notifies the Contractor that all or part of the Services do not meet the Performance Criteria, the Contractor must:

(a) take all necessary steps to ensure that the Services are promptly corrected;
(b) give notice to the Customer when the Services have been corrected; and
(c) allow the Customer to repeat the assessment of all or part of the Services against the Performance Criteria,

within five Business Days after the date of the notice or such other time as agreed between the parties in writing.

11.4 Right to terminate

If any part of the Services do not meet the Performance Criteria on two or more occasions, the Customer may (in addition to its other remedies) terminate the Contract immediately under clause 28.2 by giving the Contractor written notice.

12. Personnel

12.1 Use of Specified Personnel

The Contractor must:

(a) provide the Services or any part of the Services to which their particular expertise relates, with the active involvement of, and using the expertise of the Specified Personnel; and

(b) ensure that each of the Specified Personnel is aware of and complies with the Contractor's obligations in providing the Services.

12.2 If the Specified Personnel are not available

Where one or more of the Specified Personnel is or will become unable or unwilling to be involved in providing the Services, the Contractor must notify the Customer immediately. The Contractor must:

(a) if requested by the Customer, provide a replacement person of suitable ability and qualifications at no additional charge and at the earliest opportunity; and

(b) obtain the Customer's written consent prior to appointing any such replacement person. The Customer's consent will not be unreasonably withheld.

12.3 Customer may request replacement of Personnel

The Customer may at any time request the Contractor to remove from work in respect of this Contract any of the Specified Personnel or the Contractor's subcontractors or Personnel. The Contractor must promptly arrange for the removal of such subcontractors or Personnel and their replacement in accordance with the process outlined in clause 12.2.

13. Intellectual Property Rights

13.1 Auxiliary Material
This clause 13 does not affect the ownership of the Intellectual Property Rights in any Auxiliary Material.

13.2 Third Party Material
The Contractor must obtain all necessary copyright and other Intellectual Property Right permissions before making any Third Party Material available as Auxiliary Material for the purpose of this Contract.

13.3 Selecting an ownership model for Intellectual Property Rights in Contract Material

NOTE TO USERS:
Two models for ownership of Intellectual Property Rights in Contract Material are set out below. Under the first model, the Customer owns the Intellectual Property Rights in the Contract Material and provides a licence to the Contractor to use the Contract Material. Under the second model, the Contractor owns the Intellectual Property Rights in the Contract Material and provides a licence to the Customer to use the Contract Material.

Users are to select a model through item 16 of the Contract Details. If no model is selected, the first model will apply. The first model is not, however, intended to represent a default position. The Customer should, therefore, not rely on the position set out in the first model without considering the appropriateness of both ownership models and whether other ownership and licensing models would be more suitable. Please refer to the User Notes for further guidance. This note should be deleted prior to execution of the Contract.

(a) The ownership model for Intellectual Property Rights in Contract Material is that contained in either, but only one of, clauses 13.4 or 13.5 as set out in item 16 of the Contract Details.

(b) If no ownership model is selected in item 16 of the Contract Details, clause 13.4 applies and clause 13.5 in its entirety, does not apply to this Contract.

(c) Each party must, at its own cost, do all things and execute all documents necessary or convenient to give effect to the ownership model.

13.4 Customer ownership of Intellectual Property Rights in Contract Material

(a) All Intellectual Property Rights in the Contract Material vest in the Customer.

(b) Unless otherwise specified in item 17 of the Contract Details, to the extent that:

(i) the Customer needs to use any of the Auxiliary Material provided by the Contractor to receive the full benefit of the Services (including the Contract Material), the Contractor grants to, or must obtain for, the Commonwealth, a perpetual world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Auxiliary Material; and

(ii) the Contractor needs to use any of the:

(A) Customer Material; or

(B) Contract Material,

for the purpose of performing its obligations under this Contract, the Customer grants to the Contractor for the Contract Period, subject to any conditions or
restrictions specified in item 18 of the Contract Details and any direction by the Customer, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate such Material solely for the purpose of providing the Services.

(c) The licence granted to the Commonwealth under clause 13.4(b)(i) does not include a right to exploit the Auxiliary Material for the Commonwealth's commercial purposes.

13.5 Contractor ownership of Intellectual Property Rights in Contract Material

(a) If specified in item 16 of the Contract Details, all Intellectual Property Rights in the Contract Material vest in the Contractor.

(b) Unless otherwise specified in item 19 of the Contract Details, to the extent that:

(i) the Customer needs to use any of the:
   (A) Auxiliary Material provided by the Contractor; or
   (B) Contract Material,
   to receive the full benefit of the Services, the Contractor grants to, or must obtain for, the Commonwealth a perpetual world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate that Material; or

(ii) the Contractor needs to use any of the Customer Material for the purpose of performing its obligations under this Contract, the Customer grants to the Contractor for the Contract Period, subject to any conditions or restrictions specified in item 18 of the Contract Details and any direction by the Customer, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate such Material solely for the purpose of providing the Services.

(c) The licence granted to the Commonwealth under clause 13.5(b)(i) does not include a right to exploit the Auxiliary Material or the Contract Material for the Commonwealth's commercial purposes.

13.6 Warranty

The Contractor warrants that:

(a) the Warranted Materials and the Customer's use of those Warranted Materials, will not infringe the Intellectual Property Rights of any person; and

(b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided in this clause 13.

13.7 Remedy for breach of warranty

If someone claims, or the Customer reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights the Contractor must, in addition to the indemnity under clause 17 and to any other rights that the Customer may have against it, promptly, at the Contractor's expense:

(a) use its best efforts to secure the rights for the Customer to continue to use the affected Warranted Materials free of any claim or liability for infringement; or

(b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property Rights of any other person.
without any degradation of the performance or quality of the affected Warranted Materials.

14. Moral Rights

14.1 Obtaining consents
To the extent permitted by applicable Laws and for the benefit of the Customer, the Contractor must:

(a) give, where the Contractor is an individual; and

(b) use its best endeavours to ensure that each of the Contractor’s Personnel used in the production or creation of the Contract Material gives,

genuine consent in writing, in a form acceptable to the Customer, to the Specified Acts, even if such an act would otherwise be an infringement of their Moral Rights.

14.2 Specified Acts
In this clause, unless otherwise specified in item 20 of the Contract Details, Specified Acts means:

(a) falsely attributing the authorship of any Contract Material, or any content in the Contract Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the Copyright Act 1968 (Cth));

(b) materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material or infringing copies (within the meaning of the Copyright Act 1968 (Cth));

(c) reproducing, communicating, adapting, publishing or exhibiting any Contract Material including dealing with infringing copies, within the meaning of the Copyright Act 1968 (Cth), without attributing the authorship; and

(d) adding any additional content or information to the Contract Material.
Part 2 – General requirements

15. Payment

15.1 Obligation to pay charges
Subject to this clause and the Services meeting the Performance Criteria, the Customer must pay to the Contractor the Service Charges as set out in Schedule 3.

15.2 Contractor to provide invoice
The Contractor must provide a correctly rendered invoice to the Customer for the Service Charges in accordance with the requirements specified in Schedule 3.

15.3 Due date for payment
Unless otherwise specified in Schedule 3, the Customer must make payment of a correctly rendered invoice within 30 days after receiving the invoice.

15.3.1 Payment of simple interest
(a) This clause 15.3.1 only applies where:
   (i) the Contractor is a Small Business;
   (ii) the value of this Contract is not more than $1 million (GST inclusive); and/or
   (iii) the amount of the interest payable exceeds $10.00.
(b) The Customer must pay interest on late payments to the Contractor as follows:
   (i) for payments made by the Customer 30 days and up to 60 days after the amount became due and payable, only where the Contractor issues a correctly rendered invoice for the interest; or
   (ii) for payments made by the Customer more than 60 days after the amount became due and payable, the Customer will pay the interest accrued together with the payment.
(c) interest payable under this clause 15.3.1 will be simple interest on the unpaid amount at the General Interest Charge Rate, calculated in respect of each day from the day after the amount was due and payable, up to and including the day that the Customer effects payment as represented by the following formula:

\[ SI = UA \times GIC \times D, \]

where:

- \( SI \) = simple interest amount;
- \( UA \) = the unpaid amount;
- \( GIC \) = General Interest Charge daily rate; and
- \( D \) = the number of days from the day after payment was due up to and including the day that payment is made.
(d) In this clause 15.3.1:
   (i) 'General Interest Charge Rate' means the general interest charge rate determined under section 8AAD of the Taxation Administration Act 1953 on the day payment is due, expressed as a decimal rate per day; and
   (ii) 'The day that payment is made' is the day when the Customer's system generates a payment request into the banking system for payment to the Contractor.
‘Small Business’ means an enterprise that employs less than the full time equivalent of 20 persons on the day that this Contract is entered into. If the enterprise is an ‘associated entity’ as defined in section 50AAA of the Corporations Act, this test is applied to the group of associated entities as a whole.

For the purposes of clauses 15.3 and 15.3.1, an invoice is correctly rendered if:

(i) it is correctly addressed and calculated in accordance with this Contract;
(ii) it relates only to Services that have been delivered to the Customer in accordance with this Contract; and
(iii) it is a valid tax invoice in accordance with A New Tax System (Goods and Services Tax) Act 1999 (Cth).

15.4 Incorrect invoices, under/over payment
If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Customer to the Contractor under this Contract.

15.5 Expenses
Unless specified otherwise in Schedule 3, the Contractor must not charge the Customer for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Service Charges. The Customer is under no obligation to pay any amount in excess of the Service Charges.

16. GST

16.1 Interpretation
In this clause 16, a word or expression defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the meaning given to it in that Act.

16.2 GST gross up
If a party (Supplier) makes a supply under or in connection with this Contract in respect of which GST is payable, the recipient of the supply (Recipient) must pay to the Supplier, an additional amount equal to the GST payable on the supply (GST Amount).

16.3 Reimbursements
If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 16.2.

16.4 Exclusion of GST from calculations
If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

16.5 Adjustments
(a) If the GST payable by a Supplier on any supply made under or in connection with this Contract varies from the GST Amount paid or payable by the Recipient under clause 16.2 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Supplier will
provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.

(b) Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the GST Amount payable under clause 16.2.

(c) If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.

16.6 Tax invoice
A party need not make a payment for a taxable supply made under or in connection with this Contract until it receives a tax invoice for the supply to which the payment relates.

17. Indemnity
17.1 Indemnity by the Contractor
The Contractor indemnifies the Customer and its subcontractors and Personnel against Losses reasonably sustained or incurred by the Customer as a result of a claim made or threatened by a third party arising out of or in connection with:

(a) any negligent, unlawful or wilfully wrong act or omission of the Contractor or its subcontractors or Personnel; or

(b) an allegation that any Services or Warranted Materials (including the use of any Services or Warranted Materials by the Customer or its subcontractors or Personnel) infringes the Intellectual Property Rights or Moral Rights of the third party. For the purposes of this clause 17.1(b), an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the Patents Act 1990 (Cth), section 96 of the Designs Act 2003 (Cth), section 183 of the Copyright Act 1968 (Cth) and section 25 of the Circuit Layouts Act 1989 (Cth), constitute an infringement.

17.2 Customer's obligations
Where the Customer wishes to enforce an indemnity under clause 17.1 it must:

(a) give written notice to the Contractor as soon as practical;

(b) make reasonable efforts to mitigate the relevant Loss;

(c) subject to the Contractor agreeing to comply at all times with clause 17.3, permit the Contractor, at the Contractor's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiation or litigation that may follow; and

(d) in the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of the Customer under clause 17.2(c), provide all reasonable assistance to the Contractor in the handling of any negotiations and litigation.

17.3 Contractor's obligations
In the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of the Customer under clause 17.2(c), the Contractor must:

(a) comply with government policy and obligations, as if the Contractor were the Customer, relevant to the conduct of the litigation and any settlement negotiation (including but not limited to the Legal Services Directions) and any direction issued by the Attorney General to the Commonwealth or delegate;
(b) keep the Customer informed of any significant developments relating to the conduct of the defence or settlement of any claim; and

(c) provide to the Customer such information and documentation as are reasonably requested by the Customer, to enable the Customer to ascertain whether the defence or settlement by the Contractor of any claim is being conducted in accordance with the requirements of the Legal Services Directions, including any requirements relating to legal professional privilege and confidentiality.

18. Liability

18.1 Relevant Law

The liability of a party for breach of this Contract, or in tort, or for any other common law or statutory cause of action arising out of the operation of this Contract, will be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia.

18.2 Limitation

(a) The liability of each party arising out of or in connection with this Contract (including under any indemnity) is, subject to clause 18.2(b), limited to the amount specified in item 21 of the Contract Details.

(b) Unless specified otherwise in item 22 of the Contract Details, any limit on the liability of each party under clause 18.2(a) does not apply in relation to liability relating to:

(i) personal injury (including sickness and death);

(ii) loss of, or damage to, tangible property;

(iii) an infringement of Intellectual Property Rights;

(iv) a breach of any obligation of confidentiality, security requirement or privacy; or

(v) any breach of statute or any wilfully wrong act or omission including, in the case of the Contractor, any act or omission that constitutes repudiation of the Contract.

(c) Unless specified otherwise in item 23 of the Contract Details, the limitation of liability specified in clause 18.2(a) applies in respect of each single occurrence or a series of related occurrences arising from a single cause.

18.3 Review of limitation

(a) The parties acknowledge that the limitation of liability specified in item 21 of the Contract Details will be subject to review in the event that the Contract is varied or extended.

(b) For the avoidance of doubt, a party may require a review of the limitation of liability specified in clause 18.2 as a condition of its acceptance to a variation request under clause 8, but only for the purpose of achieving a proportionate adjustment to reflect any alteration to that party’s risk exposure arising out of that variation.

18.4 Contribution

The liability of a party (Party A) for any Losses incurred by another party (Party B) will be reduced proportionately to the extent that:

(a) any negligent act or omission of Party B (or of its subcontractors or Personnel); or

(b) any failure by Party B to comply with its obligations and responsibilities under this Contract,
contributed to those losses, regardless of whether legal proceedings are brought by Party A for negligence or breach of contract.

19. Insurance

19.1 Obligation to maintain insurance
In connection with the provision of the Services, the Contractor must have and maintain:

(a) for the Contract Period, valid and enforceable insurance policies for:
   (i) public liability;
   (ii) either professional indemnity or errors and omissions;
   (iii) workers' compensation as required by law; and
   (iv) any additional types specified in item 24 of the Contract Details; and

(b) for seven years following the expiry or termination of the Contract, valid and enforceable insurance policies for either professional indemnity or errors and omissions,

in the amounts specified in item 25 of the Contract Details.

19.2 Certificates of currency
The Contractor must, on request by the Customer, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this clause 19.

20. Confidentiality and privacy

20.1 Confidential Information not to be disclosed

(a) Subject to clause 20.3, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.

(b) In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.

20.2 Written undertakings

(a) A party (First party) may at any time require the other party to arrange for:
   (i) The other party’s Advisers; or
   (ii) any other third party, other than a Customer’s employee, to whom information may be disclosed pursuant to clause 20.3(a) or (c),

to give a written undertaking in the form set out in Schedule 8 or, where Schedule 8 does not include a form of undertaking, in the form of a deed reasonably acceptable to the First Party and relating to the use and non-disclosure of the First Party's Confidential Information.

(b) If the other party receives a request under clause 20.2(a), it must promptly arrange for all such undertakings to be given.

20.3 Exceptions to obligations
The obligations on the parties under this clause 20 will not be taken to have been breached to the extent that Confidential Information:
(a) is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;

(b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of Contract related activities;

(c) is disclosed by the Customer to the responsible Minister;

(d) is disclosed by the Customer, in response to a request by a House or a Committee of the Parliament of the Commonwealth;

(e) is shared by the Customer within the Customer's organisation, or with another Agency, where this serves the Commonwealth's legitimate interests;

(f) is authorised or required by law, including under this Contract, under a licence or otherwise, to be disclosed; or

(g) is in the public domain otherwise than due to a breach of this clause 20.

20.4 Obligations on disclosure

Where a party discloses Confidential Information to another person:

(a) pursuant to clauses 20.3(a), (b) or (e), the disclosing party must:

   (i) notify the receiving person that the information is Confidential Information; and

   (ii) not provide the information unless the receiving person agrees to keep the information confidential; or

(b) pursuant to clauses 20.3(c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information.

20.5 Additional confidential information

(a) The parties may agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract.

(b) Where the parties agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of the Contract, this documentation is incorporated into, and becomes part of this Contract, on the date by which both parties have signed this documentation.

20.6 Period of confidentiality

The obligations under this clause 20 continue, notwithstanding the expiry or termination of this Contract:

(a) in relation to an item of information described in Schedule 4, for the period set out in that Schedule in respect of that item; and

(b) in relation to any information which the parties agree in writing after the date of this Contract is to constitute Confidential Information for the purposes of this Contract, for the period agreed by the parties in writing in respect of that information.

20.7 No reduction in privacy and security obligations

Nothing in this clause 20 derogates from any obligation which either party may have either under the Law, or under this Contract, in relation to the protection of personal information and security.
21. Protection of personal information

21.1 Application of the clause

This clause applies only where the Contractor deals with personal information when, and for the purpose of, providing Services under this Contract, but does not derogate from any obligation the Contractor may have under the Law or under this Contract in relation to the protection of security.

21.2 Definitions

In this clause 21, the terms ‘agency’, ‘approved privacy code’ (APC), ‘Information Privacy Principles’ (IPPs), and ‘National Privacy Principles’ (NPPs) have the same meaning as they have in section 6 of the Privacy Act, and ‘personal information’, which also has the meaning it has in section 6 of the Privacy Act, means:

‘information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion’.

21.3 Obligations

The Contractor acknowledges that it is a ‘contracted service provider’ within the meaning of section 6 of the Privacy Act 1988 (Cth) (the Privacy Act), and agrees in respect of the provision of Services under this Contract:

(a) to use or disclose personal information obtained during the course of providing Services under this Contract, only for the purposes of this Contract;

(b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;

(c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;

(d) to notify individuals whose personal information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;

(e) not to use or disclose personal information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Contractor, unless:

(i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation of this Contract; or

(ii) in the case of an NPP or an APC – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorised by this Contract is inconsistent with the NPP or APC;

(f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with an NPP or an APC binding a party to this Contract;

(g) to immediately notify the Customer if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 21, whether by the Contractor or any subcontractor;
to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this clause 21; and

(i) to ensure that any employee of the Contractor who is required to deal with personal information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause 21.

21.4 Subcontracts
The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause 21, including the requirement in relation to subcontracts.

21.5 Indemnity
The Contractor agrees to indemnify the Customer in respect of any Loss suffered or incurred by the Customer which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause 21, or a subcontractor under the subcontract provisions referred to in clause 21.4.

22. Conflict of interest
22.1 Warranty that there is no conflict of interest
The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.

22.2 Notification of a conflict of interest
If, during the performance of the Services a conflict of interest arises, or appears likely to arise, the Contractor must:

(a) notify the Customer immediately in writing;

(b) make full disclosure of all relevant information relating to the conflict; and

(c) take such steps as the Customer reasonably requires to resolve or otherwise deal with the conflict.

23. Security
23.1 Compliance with PSPF
The Contractor must, and must ensure that its Personnel comply with:

(a) all relevant requirements of the PSPF and its Protective Security Protocols (Personnel security, Information security and Physical security), including the PSPF Protective security governance guidelines – Security of outsourced services and functions;

(b) the requirements of the Customer’s protective security policies and procedures under the PSPF, including as specified in item 26 of the Contract Details;

(c) any additional security requirements specified in item 26 of the Contract Details; and

(d) any other security requirements that are Notified by the Customer to the Contractor from time to time, including any changes to the requirements referred to in clauses 23.1(a), (b) and/or (c). Such other security requirements must be complied with from
the date specified in the Notice, or if none is specified, within 5 Business Days of receipt of the Notice.

23.2 Security classified information

The Contractor acknowledges and agrees that:

(a) it must not, and must not permit any of its Personnel or subcontractors, to access security classified information unless the individual concerned has a security clearance to the appropriate level and the need-to-know, and will prevent access by any such individual whose security clearance has lapsed or been revoked or who no longer requires such access;

(b) it must Notify the Customer immediately upon becoming aware of any unauthorised access to security classified information and the extent and nature of that access (whether incidental or accidental access, or by any of its Personnel or subcontractors), and must comply with any reasonable directions of the Customer in order to rectify the security incident; and

(c) it must, and must ensure that its Personnel and subcontractors, store and handle security classified information and resources in premises and facilities that meet the minimum standards set by the Commonwealth for storage and handling of such information and/or resources, as applicable, of the relevant security classification level.

23.3 Official Information

The Contractor acknowledges and agrees that:

(a) if and when requested by the Customer, it, its Personnel and subcontractors, must promptly execute a declaration of interest and deed of non-disclosure, in a form reasonably required by the Customer, relating to the use and non-disclosure of official information in connection with this Contract;

(b) it must promptly Notify and disclose to the Customer any conflict of interest affecting it, its Personnel or subcontractors, that may impact on security in the performance of the Contractor’s obligations with respect to official information under this Contract;

(c) it must promptly inform, and keep informed, its Personnel and subcontractors in respect of all the Customer’s security requirements, and the security obligations of the Contractor under this Contract, including that the obligation to maintain confidentiality of official information is ongoing (notwithstanding termination or expiry of this Contract or their involvement with it);

(d) it must, and must ensure that its Personnel and subcontractors, have and use systems, that meet the designated information security standards under the Australian Government Information Security Manual, for the electronic processing, storage, transmission and disposal of official information;

(e) it must, and must ensure that its Personnel and subcontractors, Notify the Customer immediately of any actual or suspected security incident, security infringement, security violation or security breach in connection with this Contract, including where it may impact upon the provision of the Services, or official information held by or in the control of the Contractor; and

(f) on termination or expiry of this Contract it must, and must ensure that its Personnel and subcontractors:

(i) delete all official information from their respective ICT systems; and
return all Customer resources and assets to the Customer,
except to the extent that the Law requires it to be retained by them, in which event the
retained information, resource or asset continues to be subject to all security requirements
applying under this Contract.

23.4 Security clearance
The Contractor acknowledges and agrees that:

(a) upon reasonable Notice from the Customer, it must ensure that each of its Personnel
and subcontractors hold and maintain a security clearance at the level and for the
period as Notified by the Customer to the Contractor, from time to time; and

(b) unless otherwise specified in item 27 of the Contract Details, it is responsible for all
costs associated with obtaining and maintaining security clearances for its Personnel
and subcontractors.

23.5 Removal of Customer Data and Customer Material
The Contractor must, and must ensure that its subcontractors and Personnel:

(a) comply with all security requirements applying to Customer Data and/or Customer
Material in respect of access to and use of Customer Data and/or Customer Material,
as specified in this Contract, in addition to any obligation under Law;

(b) Notify the Customer immediately and comply with all directions of the Customer if
any of them become aware of any contravention of the Customer’s security
requirements in relation to Customer Data and/or Customer Material;

(c) not remove Customer Data or allow Customer Data to be removed from the
Customer’s premises without the prior written consent of the Customer;

(d) not take Customer Data and/or Customer Material or allow Customer Data and/or
Customer Material to be taken outside of Australia, without the prior written consent
of the Customer; and

(e) report to CERT Australia, and the Customer, any breaches of ICT system security that
do not involve official information.

23.6 Interpretation
In this clause 23:

(a) regardless of whether or not the first letter of any word is capitalised, ‘asset’,
have the meaning given to them in the PSPF Australian Government protective
security policy framework – glossary of security terms; and

(b) an obligation of the Contractor under any of clauses 23.1, 23.2, 23.3, 23.4 or 23.5 is
additional to and does not affect nor derogate from the obligations of the Contractor
under;

(i) one or more of the other of those clauses; and/or

(ii) any other provision of this Contract.
24. Books and records

24.1 Contractor to keep books and records

The Contractor must:

(a) keep and require its subcontractors to keep adequate books and records, in accordance with Australian Accounting Standards, in sufficient detail to enable the amounts payable by the Customer under this Contract to be determined; and

(b) retain and require its subcontractors to retain for a period of seven years after termination or expiration of this Contract all books and records relating to the Services.

24.2 Costs

The Contractor must bear its own costs of complying with this clause.

24.3 Survival

This clause applies for the Contract Period and for a period of seven years from the termination or expiry of this Contract.

25. Audit and access

25.1 Right to conduct audits

The Customer or a representative may conduct audits relevant to the performance of the Contractor's obligations under this Contract. Audits may be conducted of:

(a) the Contractor's operational practices and procedures as they relate to this Contract, including security procedures, protocols and guidelines;

(b) the accuracy of the Contractor’s invoices and reports in relation to the provision of the Services under this Contract;

(c) the Contractor's compliance with its confidentiality, privacy and security requirements and obligations under this Contract;

(d) material (including books and records) in the possession of the Contractor relevant to the Services or Contract; and

(e) any other matters determined by the Customer to be relevant to the Services or Contract.

25.2 Access by Customer

(a) The Customer may, at reasonable times and on giving reasonable notice to the Contractor:

(i) access the premises of the Contractor to the extent relevant to the performance of this Contract, including for the purposes of clause 25.1;

(ii) require the provision by the Contractor, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the Customer by use of the Customer’s existing computer hardware and software;

(iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Contractor, its employees, agents or subcontractors; and

(iv) require assistance in respect of any inquiry into or concerning the Services or this Contract. For these purposes an inquiry includes any administrative or statutory
review, audit or inquiry (whether within or external to the Department), any request for information directed to the Customer, and any inquiry conducted by Parliament or any Parliamentary committee.

(b) The Contractor must provide access to its computer hardware and software and equipment to the extent necessary for the Customer to exercise its rights under this clause, and provide the Customer with any reasonable assistance requested by the Customer to use that hardware and software.

25.3 **Conduct of audit and access**

The Customer must use reasonable endeavours to ensure that:

(a) audits performed pursuant to clause 25.1; and

(b) the exercise of the general rights granted by clause 25.2 by the Customer,

do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under the Contract.

25.4 **Costs**

(a) Except as set out in clause 25.4(b), each party must bear its own costs of any reviews and/or audits.

(b) If the Contractor is able to substantiate that it has incurred direct expenses in the Customer's exercise of the rights granted under clause 25.1 or clause 25.2 which, having regard to the value of this Contract, are substantial, the Customer and the Contractor will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.

25.5 **Auditor-General and Privacy Commissioner**

The rights of the Customer under clause 25.2(a)(i) to 25.2(a)(iii) apply equally to the Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions or powers.

25.6 **Contractor to comply with Auditor-General's requirements**

The Contractor must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Privacy Commissioner's or his or her delegate's requirements, notified under clause 25.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Privacy Commissioner, or his or her respective delegate.

25.7 **No reduction in responsibility**

The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with the Contract.

25.8 **Subcontractor requirements**

The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in this clause.

25.9 **No restriction**

Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of the Customer under this Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.
25.10 Survival

This clause applies for the Contract Period and for a period of seven years from the termination or expiry of this Contract.

26. Unforeseen events

26.1 Occurrence of unforeseen event

A party (Affected Party) is excused from performing its obligations under this Contract to the extent it is prevented by circumstances beyond its reasonable control (other than lack of funds for any reason or any strike, lockout and labour disputes in respect of the Contractor only), including but not limited to acts of God, natural disasters, acts of war, riots and strikes outside that party's organisation.

26.2 Notice of unforeseen event

When the circumstances described in clause 26.1 arise or are reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance. An Affected Party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Contract.

26.3 Termination

If non-performance or diminished performance by the Affected Party due to the circumstances under clause 26.1 continues for a period of more than 14 consecutive days or other period as specified in item 28 of the Contract Details, the other party may terminate the Contract immediately by giving the Affected Party written notice.

26.4 Consequences of termination

If this Contract is terminated under clause 26.3:

(a) each party will bear its own costs and neither party will incur further liability to the other; and

(b) where the Contractor is the Affected Party, it will be entitled to payment for Services Accepted or work performed prior to the date of intervention of the circumstances described in clause 26.1.

27. Dispute resolution

27.1 No arbitration or court proceedings

If a dispute arises in relation to the conduct of this Contract (Dispute), a party must comply with this clause 27 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 27.

27.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

27.3 Parties to resolve Dispute

During the 14 days after a notice is given under clause 27.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of CEOs (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.
27.4 **Appointment of mediator**

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 27.3, the chairperson of LEADR or the chairperson's nominee will appoint a mediator.

27.5 **Role of mediator and obligations of parties**

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 27.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

27.6 **Confidentiality**

Any information or documents disclosed by a party under this clause 27:

(a) must be kept confidential; and

(b) may only be used to attempt to resolve the Dispute.

27.7 **Costs**

Each party to a Dispute must pay its own costs of complying with this clause 27. The parties to the Dispute must equally pay the costs of any mediator.

27.8 **Termination of process**

A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 27.1 to 27.5. Clauses 27.6 and 27.7 survive termination of the dispute resolution process.

27.9 **Breach of this clause**

If a party to a Dispute breaches clauses 27.1 to 27.8, the other party does not have to comply with those clauses in relation to the Dispute.

28. **Termination**

28.1 **Termination and reduction for convenience**

(a) The Customer may, at any time, by notice, terminate this Contract or reduce the scope of the Services, including for a machinery of government change.

(b) On receipt of a notice of termination or reduction the Contractor must:

(i) stop work as specified in the notice;

(ii) take all available steps to minimise loss resulting from that termination and to protect Customer Material and Contract Material; and

(iii) continue work on any part of the Services not affected by the notice.

(c) If this Contract is terminated under clause 28.1, the Customer is liable only for:

(i) payments under clause 15 for Services rendered before the effective date of termination; and

(ii) reasonable costs incurred by the Contractor and directly attributable to the termination.

(d) If the scope of the Services is reduced, the Customer's liability to pay the Service Charges or to provide Customer Material abates in accordance with the reduction in the Services.
(c) The Customer is not liable to pay compensation under clause 28.1(c)(ii) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, exceed the total Service Charges payable under this Contract.

(f) The Contractor is not entitled to compensation for loss of prospective profits.

28.2 Termination by the Customer for default

(a) Without limiting any other rights or remedies the Customer may have against the Contractor arising out of or in connection with this Contract, the Customer may terminate this Contract effective immediately by giving notice to the Contractor if:

(i) the Contractor breaches a material provision of this Contract where that breach is not capable of remedy;

(ii) the Contractor breaches any provision of this Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so; or

(iii) an event specified in clause 28.2(c)(i)-(vii) happens to the Contractor.

(b) Without limitation, for the purposes of clause 28.2(a), each of the following constitutes a breach of a material provision:

(i) breach of warranty under clause 6.2 (Contractor warranties);

(ii) a failure to comply with clause 6.6 (Fair Work Principles);

(iii) a failure to comply with clause 6.7 (Work Health and Safety);

(iv) a failure to comply with clause 12 (Personnel);

(v) a failure to comply with clause 13 (Intellectual Property Rights);

(vi) a failure to comply with clause 19 (Insurance);

(vii) a failure to comply with clause 20 (Confidentiality and privacy);

(viii) a failure to comply with clause 21 (Protection of personal information); or

(ix) a failure to notify the Customer of a conflict of interest under clause 22 (Conflict of interest);

(x) a failure to comply with clause 23.1, 23.2, 23.3(a) to (e), 23.4, or 23.5(a) to (d) (Security).

(c) The Contractor must notify the Customer immediately if:

(i) the Contractor being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Contractor;

(ii) the Contractor disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;

(iii) the Contractor ceases to carry on business;

(iv) the Contractor ceases to be able to pay its debts as they become due;

(v) the Contractor being a company enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;

(vi) the Contractor being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
(vii) where the Contractor is a partnership, any step is taken to dissolve that partnership.

In this clause, controller, managing controller and administrator have the same meanings as in the Corporations Act.

28.3 Termination by the Contractor for default
Without limiting any other rights or remedies the Contractor may have against the Customer arising out of or in connection with this Contract, the Contractor may terminate this Contract by giving at least 5 Business Days notice to the Customer if the Customer:

(a) has not paid a correctly rendered invoice or has not notified the Contractor that it disputes the charges specified under an invoice within 60 days of receipt of that invoice; and

(b) the Contractor has given the Customer:

(i) a first notice 30 days after the due date of the invoice, specifying the failure to pay and giving the Customer at least 30 days to pay the invoice; and

(ii) a second notice 15 days after the first notice, referring to the first notice and giving the Customer at least 15 days to pay the invoice.

28.4 After termination
On termination or expiry of this Contract the Contractor must:

(a) stop work on the Services;

(b) deal with Customer Material as reasonably directed by the Customer; and

(c) return all the Customer's Confidential Information to the Customer.

28.5 Survival
The following clauses survive the termination and expiry of this Contract:

(a) Clause 6.7 (Work Health and Safety);

(b) Clause 13 (Intellectual Property);

(c) Clause 14 (Moral Rights);

(d) Clause 17 (Indemnity);

(e) Clause 18 (Liability);

(f) Clause 19 (Insurance);

(g) Clause 20 (Confidentiality and privacy);

(h) Clause 21 (Protection of personal information);

(i) Clause 23 (Security);

(j) Clause 24 (Books and Records);

(k) Clause 25 (Audit and access);

(l) Clauses 28.4, 28.5 & 28.6 (After termination); and

(m) Clause 29 (Knowledge transfer).

28.6 Termination does not affect accrued rights
Termination of this Contract does not affect any accrued rights or remedies of a party.
29. Knowledge transfer

Subject to any qualification or provision to the contrary in the Statement of Work, the Contractor must provide the following assistance to the Customer on termination or expiration of this Contract:

(a) transferring or providing access to the Customer to all information stored by whatever means held by the Contractor or under the control of the Contractor in connection with this Contract; and

(b) making Specified Personnel and Contractor Personnel available for discussions with the Customer as may be required. The time, length and subject of these discussions will be at the sole discretion of the Customer, provided that any matter discussed is not considered to reveal any 'Commercial-in-Confidence' information of the Contractor.

30. Notices and other communications

30.1 Service of notices

A Notice must be:

(a) in writing, in English and signed by a person duly authorised by the sender; and

(b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in item 29 of the Contract Details, as varied by any Notice given by the recipient to the sender.

30.2 Effective on receipt

A Notice given in accordance with clause 30.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

(a) if hand delivered, on delivery;

(b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or

(c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice, but if the delivery, receipt or transmission is not on a Business Day or is after 6.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

31. Miscellaneous

31.1 Ownership of Contract

All copyright and other Intellectual Property Rights contained in this Contract remain the property of the Customer.

31.2 Varying the Contract

This Contract may be varied only in writing signed by each party.

31.3 Approvals and consents

Except where this Contract expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Contract.
31.4 **Assignment and novation**  
A party may only assign its rights or novate its rights and obligations under this Contract with the prior written consent of the other party.

31.5 **Costs**  
Each party must pay its own costs of negotiating, preparing and executing this Contract.

31.6 **Counterparts**  
This Contract may be executed in counterparts. All executed counterparts constitute one document.

31.7 **No merger**  
The rights and obligations of the parties under this Contract do not merge on completion of any transaction contemplated by this Contract.

31.8 **Entire agreement**  
This Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

31.9 **Further action**  
Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract and any transaction contemplated by it.

31.10 **Severability**  
A term or part of a term of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining terms or parts of the terms of this Contract continue in force.

31.11 **Waiver**  
Waiver of any provision of or right under this Contract:

(a) must be in writing signed by the party entitled to the benefit of that provision or right; and  

(b) is effective only to the extent set out in any written waiver.

31.12 **Relationship**  
(a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.

(b) This Contract does not create a relationship of employment, agency or partnership between the parties.

31.13 **Announcements**  
(a) The Contractor must, before making a public announcement in connection with this Contract or any transaction contemplated by it, obtain the Customer's agreement to the announcement, except if required by law or a regulatory body (including a relevant stock exchange).

(b) If the Contractor is required by law or a regulatory body to make a public announcement in connection with this Contract or any transaction contemplated by this Contract the Contractor must, to the extent practicable, first consult with and take into account the reasonable requirements of the Customer.
(c) Where reasonably practicable, the Customer must, on or before making a public announcement in connection with this Contract or any transaction contemplated by it, provide notice to the Contractor of the general nature of the announcement. For the avoidance of doubt, the Customer does not require the consent of the Contractor to the making of the announcement.

31.14 Governing law and jurisdiction

Unless otherwise specified in item 30 of the Contract Details, this Contract is governed by, and is to be construed in accordance with, the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.
## Schedule 1 – Contract Details

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description</th>
<th>Clause Reference</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Customer details</td>
<td>1.1</td>
<td>[insert name of Customer]</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>[insert street address]</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>[insert ABN]</td>
</tr>
<tr>
<td>2</td>
<td>Contractor details</td>
<td>1.1</td>
<td>[insert name of Contractor]</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>[insert street address]</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>[insert ABN]</td>
</tr>
<tr>
<td>3</td>
<td>Customer Representative</td>
<td>1.1</td>
<td>[insert position and/or name of the Customer's representative]</td>
</tr>
<tr>
<td>4</td>
<td>Contractor Representative</td>
<td>1.1</td>
<td>[insert position and/or name of Contractor's representative]</td>
</tr>
<tr>
<td>5</td>
<td>Business Hours</td>
<td>1.1</td>
<td>[if Business Hours differ from those specified in the definition, specify alternative hours here. Otherwise insert 'not applicable']</td>
</tr>
<tr>
<td>6</td>
<td>Commencement Date</td>
<td>1.1 and 3.1</td>
<td>[insert date Contract is to commence eg, dd/mm/yy]</td>
</tr>
<tr>
<td>7</td>
<td>Initial Contract Period</td>
<td>1.1 and 3.1</td>
<td>[insert the initial period of time for which the Contract will continue, eg 2 years]</td>
</tr>
<tr>
<td>8</td>
<td>Option Period</td>
<td>3.2</td>
<td>[insert Option Period eg, 2 periods each being 1 year in duration. Otherwise insert 'not applicable']</td>
</tr>
<tr>
<td>9</td>
<td>Option Notice Period</td>
<td>3.2</td>
<td>[if Option Notice Period is to be other than 30 days, insert alternative Option Notice Period (eg, 45 days). Otherwise insert 'not applicable']</td>
</tr>
<tr>
<td>10</td>
<td>Nominated Agency</td>
<td>1.1 and 4</td>
<td>[insert name(s) of any Nominated Agencies. ]</td>
</tr>
<tr>
<td>11</td>
<td>Relevant Industry Standards</td>
<td>6.1(c)</td>
<td>[insert relevant Industry Standards, best practice and guidelines (if any). Otherwise insert 'not applicable']</td>
</tr>
<tr>
<td>12</td>
<td>Subcontractors</td>
<td>6.5</td>
<td>[insert names and ABNs of any subcontractors. Otherwise insert 'not applicable']</td>
</tr>
<tr>
<td>13</td>
<td>Language of Documentation</td>
<td>7.2</td>
<td>[if the Documentation is to be in a language other than English, specify the required language here. Otherwise insert 'not applicable']</td>
</tr>
<tr>
<td>Item number</td>
<td>Description</td>
<td>Clause Reference</td>
<td>Details</td>
</tr>
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<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>14.</td>
<td>Period for notification</td>
<td>11.2</td>
<td>[if the period for notification is to be a period other than 5 Business Days of assessing the Services against the Performance Criteria, specify the relevant timeframe here. Otherwise insert 'not applicable']</td>
</tr>
<tr>
<td>15.</td>
<td>Specified Personnel</td>
<td>12</td>
<td>[insert names and positions of Specified Personnel. Otherwise insert 'not applicable']</td>
</tr>
<tr>
<td>16.</td>
<td>Intellectual Property Rights – Ownership of Contract Material</td>
<td>13.3</td>
<td>[parties are to select one of the following. Refer to the note to users at clause 13.3 for further information]</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>□ clause 13.4 (Customer Ownership of and licence to Intellectual Property Rights in Contract Material) is to apply</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>□ clause 13.5 (Contractor Ownership of and licence to Intellectual Property Rights in Contract Material) is to apply</td>
</tr>
<tr>
<td>17.</td>
<td>Intellectual Property Rights – licences</td>
<td>13.4(b)</td>
<td>Where clause 13.4 (Customer Ownership of and licence to Intellectual Property Rights in Contract Material) is to apply:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1. [If the terms of the licence are to differ from that provided in clause 13.4(b) state the position here. Otherwise insert 'not applicable']</td>
</tr>
<tr>
<td>18.</td>
<td>Customer Material</td>
<td>1.1, 13.4(b) and 13.5(b)</td>
<td>[insert specific Material to be provided to the Contractor by the Customer (if any) and any restrictions on the use of the Material. Otherwise insert 'not applicable']</td>
</tr>
<tr>
<td>19.</td>
<td>Intellectual Property Rights – licences</td>
<td>13.5(b)</td>
<td>Where clause 13.5 (Contractor ownership of and licence to Intellectual Property Rights in Contract Material) is to apply:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1. 2. [If the terms of the licence are to differ from that provided in clause 13.5(b) state the position here. Otherwise insert 'not applicable']</td>
</tr>
<tr>
<td>20.</td>
<td>Moral Rights – Specified Acts</td>
<td>14.2</td>
<td>[if the Customer wants to perform additional acts with the Contract Material other than those listed in clause 14.2, these should be]</td>
</tr>
<tr>
<td>Item number</td>
<td>Description</td>
<td>Clause Reference</td>
<td>Details</td>
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<td></td>
<td>set out here. Otherwise insert 'not applicable'</td>
</tr>
<tr>
<td>21.</td>
<td>Limitation of liability – cap</td>
<td>18.2(a)</td>
<td>[specify the amount to which liability is to be limited]</td>
</tr>
<tr>
<td>22.</td>
<td>Limitation of liability – limitation on types of liability</td>
<td>18.2(b)</td>
<td>[if the parties are to have limited liability for any of the types of liability described in clause 18.2(b), those types of liability should be specified here]</td>
</tr>
<tr>
<td>23.</td>
<td>Limitation of liability – aggregate or per occurrence</td>
<td>18.2(c)</td>
<td>[if the limitation of liability is not to apply in respect of each single occurrence or a series of related occurrences arising from a single cause then specify the basis on which it is to apply e.g., in aggregate over the Contract Period]</td>
</tr>
<tr>
<td>24.</td>
<td>Additional insurance</td>
<td>19.1</td>
<td>[insert any additional types of insurance the Contractor is required to maintain. Otherwise insert 'not applicable']</td>
</tr>
<tr>
<td>25.</td>
<td>Insurance quantum</td>
<td>19.1</td>
<td>Public liability insurance for an insured amount of [$insert amount] per occurrence and not less than [$insert amount] in aggregate</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Either professional indemnity or errors and omissions insurance for an insured amount of [$insert amount] per occurrence and not less than [$insert amount] in aggregate</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Workers compensation as required by law</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>[insert amount required of any other type of insurance specified at item 24 above]</td>
</tr>
<tr>
<td>26.</td>
<td>Security</td>
<td>23.1</td>
<td>Customer’s Agency protective security policies and procedures:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>[Insert Customer’s relevant website address for their PSPF requirements of contractors OR insert ‘refer to attached schedule of the Customer’s PSPF requirements of contractors’.]</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Additional security requirements;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>[insert any security requirements additional to those specified in clause 23. Otherwise insert 'not applicable']</td>
</tr>
<tr>
<td>27.</td>
<td>Costs of security clearances</td>
<td>23.4</td>
<td>[if the position as to payment for security clearances is to differ from that provided in clause 23.4, state the position here.</td>
</tr>
<tr>
<td>Item number</td>
<td>Description</td>
<td>Clause Reference</td>
<td>Details</td>
</tr>
<tr>
<td>------------</td>
<td>----------------------------------</td>
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<td>----------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>28.</td>
<td>Unforeseen events termination period</td>
<td>26.3</td>
<td>[if a termination period other than 14 days will apply in the event of an 'unforeseen event,' specify it here. Otherwise insert 'not applicable']</td>
</tr>
<tr>
<td>29.</td>
<td>Address for Notices</td>
<td>30.1</td>
<td>Customer: [insert name and/or position of person to receive notices] [insert postal address] [insert physical address] [insert facsimile number] Contractor: [insert name and/or position of person to receive Notices] [insert postal address] [insert physical address] [insert facsimile number]</td>
</tr>
<tr>
<td>30.</td>
<td>Governing Law</td>
<td>31.14</td>
<td>[insert the law which is to govern the Contract if not that of the Australian Capital Territory]</td>
</tr>
</tbody>
</table>
Schedule 2 – Statement of Work

Note: Insert particulars of the Services and Deliverables to be provided under this Contract in this Schedule. The format of this Schedule is provided as an example only and may be amended to address particular Customer requirements.

1. Purpose (clause 6)

Note: Insert a brief summary of the:

(a) business requirements of the Customer relevant to provision of the Services; and
(b) purpose of procuring the Services.

2. Services (clauses 1.1 and 6)

Note: Insert details of Services here:

<table>
<thead>
<tr>
<th>Description of Services (attach additional pages if required)</th>
<th>Milestone</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
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<tr>
<td>2.</td>
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<td>3.</td>
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<td>4.</td>
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<td>5.</td>
<td></td>
</tr>
</tbody>
</table>

3. Deliverables (clauses 1.1 and 13.6)

Note: Insert details of Deliverables here, including Milestones.

<table>
<thead>
<tr>
<th>Deliverables</th>
<th>Milestone</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
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<tr>
<td>3.</td>
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<td>4.</td>
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<tr>
<td>5.</td>
<td></td>
</tr>
</tbody>
</table>
4. Documentation (clause 7)

*Note: Insert details of Documentation here, including required format and Milestones.*

<table>
<thead>
<tr>
<th>Documentation</th>
<th>Format</th>
<th>Milestone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

5. Performance Criteria (clauses 1.1 and 11)

*Note: Insert details of Performance Criteria against which the Services and Deliverables will be assessed, and the date of assessment.***

<table>
<thead>
<tr>
<th>Service/Deliverable</th>
<th>Performance Criteria</th>
<th>Assessment date</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

6. Progress meetings (clause 10.1)

*Note: Insert details of attendees, frequency (eg. weekly, monthly) and place of meetings.***

<table>
<thead>
<tr>
<th>Meeting</th>
<th>Attendees</th>
<th>Frequency</th>
<th>Place</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>
7. Reporting (clause 10.2)

*Note: Insert details of required reports, including content, frequency (eg. weekly, monthly) and dates due.*

<table>
<thead>
<tr>
<th>Report type and content</th>
<th>Frequency</th>
<th>Milestone</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

8. Knowledge Transfer (clause 29)

*Note: If requirements for Knowledge Transfer are different to those specified in clause 29, specify the requirements here.*

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Milestone</th>
</tr>
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<tbody>
<tr>
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</tbody>
</table>
Schedule 3 – Payment

Note: Insert details of all relevant charges, costs or fees for the performance of the Services and provision of Deliverables and when each item is payable. All Service Charges are GST exclusive. The format of this Schedule is provided as an example only and may be amended to address particular Customer requirements.

1. Fixed charges (clause 15)

Note: Insert fixed charges for Services. If payment is to be made on a time and materials basis, mark this section as 'Not Applicable'.

<table>
<thead>
<tr>
<th></th>
<th>Charges (exclusive of GST)</th>
<th>GST Component</th>
<th>Total (inclusive of GST)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Charges (fixed)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Charges (if any)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Hourly rates

Note: Add hourly rates for each person if payment is to be made on a time and materials basis.

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Hourly Rate (exclusive of GST)</th>
<th>GST Component</th>
<th>Maximum Work Effort (Days)</th>
<th>Charges (exclusive of GST)</th>
<th>GST Component</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

Sub total

Add GST

**TOTAL**
3. **Daily rates**

*Note: Add daily rates for each person if payment is to be made on a time and materials basis.*

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Daily Rate (exclusive of GST)</th>
<th>GST Component</th>
<th>Maximum Work Effort (Days)</th>
<th>Charges (exclusive of GST)</th>
<th>GST Component</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

Sub total

Add GST

TOTAL

4. **Milestone Payments**

*Note: Insert Milestone payment amounts against the Milestone dates. If Milestone Payments are not applicable, mark as 'Not Applicable'.*

<table>
<thead>
<tr>
<th>Milestone date</th>
<th>Milestone/Deliverable</th>
<th>Milestone Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

TOTAL

5. **Invoicing requirements (clause 15.2)**

*Note: Specify invoicing requirements here.*

6. **Payment period (clause 15.3)**

*Note: Specify an alternative payment period if the 30 day period contemplated in clause 15.3 is not suitable.*

7. **Expenses (clause 15.5)**

*Note: If the default position specified in clause 15.5 it to apply, insert – Not Applicable.*

Otherwise insert the following paragraphs.

(a) Subject to (b) below, the Customer will not pay any travel, accommodation or other expenses unless they have been pre-approved in writing by the Customer (in its absolute discretion).
(b) The Contractor will be reimbursed for the travel and related accommodation at non-SES rates where they are pre-approved in writing by the Customer. The Contractor must submit an invoice for those expenses and the Customer will reimburse the Contractor in accordance with the invoicing procedures set out in this Schedule.
### Schedule 4 – Designated Confidential Information

**Note:** This Schedule should include each party’s Confidential Information. The period of confidentiality should be specified for each item. If the parties agree that different items of information are to be confidential for different periods of time, the different periods should be recorded next to each item. An assessment will need to be made by the parties on a case-by-case basis about what is to be included in the Schedule.

1. **Confidential information of the Customer (clause 1.1 and 20)**

   **1.1 Contract provisions / Schedules**

<table>
<thead>
<tr>
<th>Item</th>
<th>Period of Confidentiality</th>
</tr>
</thead>
<tbody>
<tr>
<td>[insert relevant items]</td>
<td></td>
</tr>
</tbody>
</table>

   **1.2 Contract-related Material**

<table>
<thead>
<tr>
<th>Item</th>
<th>Period of Confidentiality</th>
</tr>
</thead>
<tbody>
<tr>
<td>[insert relevant items]</td>
<td></td>
</tr>
</tbody>
</table>

2. **Confidential information of the Contractor (clause 1.1 and 20)**

   **2.1 Contract provisions / Schedules**

<table>
<thead>
<tr>
<th>Item</th>
<th>Period of Confidentiality</th>
</tr>
</thead>
<tbody>
<tr>
<td>[insert relevant items]</td>
<td></td>
</tr>
</tbody>
</table>

   **2.2 Contract-related Material**

<table>
<thead>
<tr>
<th>Item</th>
<th>Period of Confidentiality</th>
</tr>
</thead>
<tbody>
<tr>
<td>[insert relevant items]</td>
<td></td>
</tr>
</tbody>
</table>
Schedule 5 – Customer Requirements

Note: Customer to address particular requirements with which the Contractor must comply, for example, Customer specific legislative requirements (including in relation to secrecy and confidentiality), specific Customer policies and/or procedures and specific Commonwealth government policies.
Schedule 6 – Change Order

Note: If the proposed changes will vary the Specifications, or the Services, the following form must be completed.

This Change Order (including its attachments, if any) serves to vary the Contract in accordance with the terms set out below. Unless specifically stated in this Change Order, all terms and conditions of the Contract continue unaffected.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Change Order number</td>
</tr>
<tr>
<td>2.</td>
<td>Raised by</td>
</tr>
<tr>
<td>3.</td>
<td>Details of change (use attachments if required)</td>
</tr>
<tr>
<td>4.</td>
<td>Implementation date of Change Order</td>
</tr>
<tr>
<td>5.</td>
<td>Effect on Services</td>
</tr>
<tr>
<td>6.</td>
<td>Plan for implementing the change</td>
</tr>
<tr>
<td>7.</td>
<td>Effect on Service Charges</td>
</tr>
<tr>
<td>8.</td>
<td>Effect on Performance Criteria</td>
</tr>
<tr>
<td>9.</td>
<td>Effect on Documentation</td>
</tr>
<tr>
<td>10.</td>
<td>Other relevant matters (eg transitional impacts)</td>
</tr>
</tbody>
</table>

Customer
Name (print) ____________________________
Position ____________________________
Signature ____________________________
Date ____________________________

Contractor
Name (print) ____________________________
Position ____________________________
Signature ____________________________
Date ____________________________
Schedule 7 – Agency Order Form

The Contractor has offered under clause 4 of the Contract specified at item 1 below to provide the Services to Nominated Agencies. The Nominated Agency specified in item 3 below requests certain Services which the Contractor agrees to provide on the terms and conditions set out in the Contract and in this Agency Order Form. If there is an inconsistency between this Agency Order Form and any other provisions of the Contract, the terms and conditions in this Agency Order Form will prevail to the extent of any inconsistency.

<table>
<thead>
<tr>
<th></th>
<th>Contract No. and description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Names of Parties to the Contract</td>
</tr>
</tbody>
</table>
| 3. | Customer | [Insert Nominated Agency name]  
A reference to [insert name of the contracting Agency] or the Customer in the Contract will be taken as a reference to [the Nominated Agency] |
| 4. | Commencement Date |
| 5. | Customer Representative | Title:  
Name:  
Postal Address:  
Fax number:  
Email: |
| 6. | Customer's details for Notices | Postal address:  
Physical address:  
Facsimile number: |
| 7. | Contractor Specified Personnel | [insert names] |
| 8. | Services required (including any changes to the Statement of Requirements) | [attach additional pages if required] |
Signed for and on behalf of the [insert for FMA agency – ‘Commonwealth of Australia represented by (name of agency), otherwise – (name of Customer)] by its duly authorised delegate in the presence of

[Signature of witness]  [Signature of delegate]

[Name of witness (print)]  [Name of delegate (print)]

[Position of delegate (print)]

[Select one of the following execution clauses. Where the Contractor is a company with multiple directors, select the first execution block below, otherwise, select the second option.]

Executed by [insert name of company] in accordance with Section 127 of the Corporations Act 2001 in the presence of

[Signature of director]  [Signature of director/company secretary (Please delete as applicable)]

[Name of director (print)]  [Name of director/company secretary (print)]

Signed by [insert contracting party name] in the presence of

[Signature of witness]  [Signature of Contractor]

[Name of witness (print)]
Schedule 8 – Confidentiality and privacy undertaking

Note: Insert here the terms of the confidentiality and privacy undertaking (if any) which a party may be required, under clause 20.2, to arrange for its Advisers or other third parties to give.
EXECUTED as an agreement.

Signed for and on behalf of the [insert for FMA agency – ‘Commonwealth of Australia represented by (name of agency), otherwise – (name of Customer)] by its duly authorised delegate in the presence of

________________________________________  ______________________________________
Signature of witness                                      Signature of delegate

________________________________________  ______________________________________
Name of witness (print)                                  Name of delegate (print)

Position of delegate (print)

[Select one of the following execution clauses. Where the Contractor is a company with multiple directors, select the first execution block below, otherwise, select the second option.]

Executed by [insert name of company] in accordance with Section 127 of the Corporations Act 2001 in the presence of

________________________________________  ______________________________________
Signature of director                                      Signature of director/company secretary
(Please delete as applicable)

________________________________________  ______________________________________
Name of director (print)                                  Name of director/company secretary (print)

Signed by [insert contracting party name] in the presence of

________________________________________  ______________________________________
Signature of witness                                      Signature of Contractor

Name of witness (print)